IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

WP(C).No. 2209 of 2004(K)

PETITIONERS:

---

1. E.A. VIMALA PHILOMINA, P.D. TEACHER,
   VOCATIONAL HIGHER SECONDARY SCHOOL,
   KADAPPURAM.

2. M.C. SUMA, P.D. TEACHER,
   G.L.P. SCHOOL, ERATTAPPUZHA.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)

RESPONDENTS:

---

1. ASSISTANT EDUCATIONAL OFFICER,
   CHAVAKKAD.

2. DISTRICT EDUCATIONAL OFFICER,
   CHAVAKKAD.

3. DEPUTY DIRECTOR OF EDUCATION,
   THRISSUR.

4. SECRETARY, GENERAL EDUCATION
   DEPARTMENT, GOVERNMENT OF KERALA,
   GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

5. STATE OF KERALA, REPRESENTED BY THE
   CHIEF SECRETARY TO GOVERNMENT,
   GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/04/2007,THE COURT ON THE SAME DAYDELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF ORDER DT.31.5.1993 ISSUED BY THE 2ND RESPONDENT.

EXT.P2: COPY OF LETTER DT.3.6.93 ADDRESSED BY THE 1ST RESPONDENT TO THE HEADMASTER, AMLP SCHOOL, THALIKKAD MADRASSA.

EXT.P3: COPY OF ORDER DT.9.6.1993 ISSUED BY THE 3RD RESPONDENT.

EXT.P4: COPY OF RELIEVING ORDER DT. 8.6.94 ISSUED BY THE 1ST RESPONDENT.

EXT.P5: COPY OF GOVT. ORDER DT. 17.8.2002.

EXT.P6: COPY OF GOVT. ORDER DT. 23.9.2002.

EXT.P7: COPY OF REPRESENTATION DT. 17.11.95 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P8: COPY OF REPRESENTATION DT. 15.9.95 SUBMITTED BY THE PETITIONERS BEFORE THE GOVERNMENT.

EXT.P9: COPY OF REPRESENTATION DT. 25.10.2002 SUBMITTED BY THE PETITIONERS BEFORE THE GOVERNMENT.

EXT.P10: COPY OF GOVT. ORDER G.O.(Rt) NO.1093/03/GE DT. 21.3.2003.

EXT.P11: COPY OF THE JUDGMENT OF THIS HON'BLE COURT DT. 27.11.2002 IN OP.No.35557/2002.

EXT.P12: COPY OF GOVT. ORDER G.O.(Rt) No.4457/03/GE DT.31.10.2003.

TRUE COPY

P.A.TO JUDGE

A.K.BASHEER,J

==========

W. P.(C).No.2209 OF 2004

==========

Dated this the 2nd day of April, 2007

JUDGMENT

Petitioners had been working in an aided Lower Primary School as PD teachers. In the year 1993, the said school had to be closed down for want of sufficient student strength. Petitioners were deployed to some Government schools ever since 1993, as revealed from Ext.P3. Grievance of the petitioners is that their services are not yet regularised by absorbing them into government service, while several of their juniors whose names are included in Ext.P3, have been absorbed in service already.

2. Learned senior counsel for the petitioner has invited my attention to Ext.P10 order in this connection. He point out that the teachers who were deployed to government schools from nearby aided schools were later absorbed in Government service. Those teachers are in fact juniors to the petitioners.

3. In the counter affidavit it is contented by respondent No.4 that the Government finds it difficult to absorb teachers like the petitioners since several thrown out teachers as well as selected candidates in the ranked lists published by PSC, are waiting for their turn for appointment. A distinction is also sought to be drawn by

contenting that the government gets possession of land and buildings of schools which are closed down for want of student strength . But in the case of aided schools the managements retain possession of the school properties. The government is left with a heavy burden and responsibility of absorbing a large number of teachers in such instances.

4. It may be true that the government is faced with an uneviable situation in the case of unaided schools which are closed down for want of student strength. But it is seen admitted in the counter affidavit and Ext.P12 order, that the government as a matter of policy, had been deploying the teachers from aided schools also irrespective of the fact the property of the school is not handed over to the Government. Ext.P10, which was passed seven months prior to the date of issuing Ext.P12 order also shows that some other similarly placed teachers had been absorbed in service. However, when it comes to the case of the petitioners, the government has taken a volteface, contenting that the financial burden is too heavy to absorb them in service. It has to be remembered that the Government has not changed its policy. Therefore, the Government cannot be heard to say that it cannot give a similar treatment to the petitioners as was given in the case of those teachers who were beneficiaries of Ext.P10 order. As mentioned earlier, petitioners have raised a specific

contention that some of their juniors, whose names were included in Ext.P3, had already been absorbed by the government. Anyhow having heard the learned Senior Counsel and the learned government pleader, I am satisfied that Ext.P12 order cannot be sustained and it is liable to be quashed. I do so.

The writ petition is therefore, disposed of with a direction to respondents 3 and/ or 4 to pass fresh orders in the matter keeping in view Ext.P10 order passed by the government in the case of other similarly situated persons, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

A.K. BASHEER,JUDGE

dvs